

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1909.

565

GUS H. BEAULIEU, APPELLANT,

vs.

JAMES R. GARFIELD, SECRETARY OF THE INTERIOR,
AND FRED DENNETT, COMMISSIONER OF THE GEN-
ERAL LAND OFFICE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 25, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1909.

GUS H. BEAULIEU, Appellant,
v.s.

JAMES R. GARFIELD, Secretary of the Interior, ET AL.

a Supreme Court of the District of Columbia.

In Equity. No. 27581.

GUS H. BEAULIEU, Plaintiff,
v.

JAMES R. GARFIELD, Secretary of the Interior, and RICHARD A. BALLINGER, Commissioner of the General Land Office, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

1

Bill.

Filed January 23, 1908.

In the Supreme Court of the District of Columbia.

Number 27581.

GUS H. BEAULIEU, Plaintiff,
v.

JAMES R. GARFIELD, Secretary of the Interior, and RICHARD A. BALLINGER, Commissioner of the General Land Office, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The plaintiff states as follows:

That he is a citizen of the United States, resident at White Earth, in the state of Minnesota; that he is a mixed-blood Chippewa Indian and a member of that tribe or consolidation of bands referred

to in the act of Congress entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889 (25 Stat. 645) and commonly known as "The Chippewa Indians in the State of Minnesota"; and that he brings this suit in his own right and in behalf of the other members of said bands jointly interested with him in the equities hereinafter described.

That defendant James R. Garfield is the Secretary of the
2 Interior and a resident of the District of Columbia, and is hereby sued in his official capacity.

That defendant Richard A. Ballinger is the Commissioner of the United States General Land Office and a resident of the District of Columbia, and is hereby sued in his official capacity.

That the so-called Chippewa Indians in the State of Minnesota are the equitable owners of large tracts of land in the state of Minnesota, secured to them (or to individual bands of said tribe since consolidated and known as the Chippewa Indians in Minnesota) by the terms of the Treaty of August 19, 1825, at Prairie du Chien (7 Stat. 272), Treaty of February 22, 1855 at Washington (10 Stat. 1165), Treaty of March 11, 1863 at Washington (12 Stat. 1249), Treaty of May 7, 1864 at Washington (13 Stat. 693), and Treaty of March 19, 1867 at Washington (16 Stat. 719) and confirmed to them by the acts of Congress approved January 14, 1889 (*supra*), and the acts amendatory thereto approved August 19, 1890 and June 27, 1902, said tracts of land being commonly known and described as "the ceded Chippewa Indian Reservations in the State of Minnesota."

That under the said Acts of January 14, 1889 and those amendatory thereof, these said lands are held in trust by the United States Government for the beneficial use of the said Chippewa Indians in the State of Minnesota, of which the plaintiff herein is a member, and the title to said lands is claimed by said Indians to have been uninterruptedly in them from time immemorial

That the defendant, the Secretary of the Interior, has expressed himself as favorably inclined toward the alleged
3 claim of the State of Minnesota, recently asserted without valid foundation (as the plaintiff is informed and believes,) to numerous tracts contained with the Indian lands hereinbefore referred to as reserved for the benefit of the said Chippewa Indians, the said Secretary of the Interior having already approved for patent certain lists of state selections therefor, and threatens to direct the defendant the Commissioner of the General Land Office to issue patents to the said State therefor.

That the said threatened action is without warrant in law, is in violation of the rights of this plaintiff and the other said Indians, guaranteed to them under the said treaties, agreements and acts of Congress, and is subversive of the trust created as aforesaid for the said Chippewa Indians.

That if the said threatened action is persisted in, this plaintiff and his associates the Chippewa Indians in the State of Minnesota will be deprived of upwards of one hundred thousand acres of land,

without due process of law and in violation of the Constitution of the United States.

That the value of said property cannot be properly ascertained, but, with the pine timber thereon, is reasonably worth more than the sum of one million dollars.

That the injury which will be occasioned to this plaintiff and to his associate Chippewa Indians in the State of Minnesota is imminent, and its effects irremediable; and they have no adequate remedy at law or by any other process of jurisdiction which may be invoked for the protection of the property rights of the
4 said plaintiff and of the said other Chippewa Indians in whose behalf this suit is brought, than the relief herein prayed of this honorable Court.

The premises considered, the plaintiff prays that process of subpœna issue to the said defendants, James A. Garfield and Richard A. Ballinger, requiring them and each of them to appear and answer fully the exigencies of this bill; and, to that end, that the necessary process issue and the proper orders be had; that a preliminary injunction issue to the said defendants and to each of them, or a rule to show cause why a perpetual injunction should not be granted, enjoining them and each of them and their successors in office, from making any disposition of the said lands within the said ceded Chippewa Indian Reservation in Minnesota, referred to in said Act of January 14, 1889, (25 Stat. 645) other than as provided and directed by the said Act of January 14, 1889 and the acts amendatory thereof and supplementary thereto; and for such other and further relief as to this honorable Court shall seem fit and proper.

GUS H. BEAULIEU, *Plaintiff,*
By CHAUNCEY E. RICHARDSON,
Attorney in Fact.

C. E. RICHARDSON,
Att'y for Plff.
LOUIS A. PRATT,
Of Counsel.

DISTRICT OF COLUMBIA, ss:

Chauncey E. Richardson, being first duly sworn, on oath, deposes and says that he is the attorney in fact for Gus H.
5 Beaulieu, the party named in the foregoing bill; that as such attorney in fact, he has subscribed the name of said Gus H. Beaulieu as plaintiff; that the matters alleged in said bill are true to the best of his knowledge and belief.

CHAUNCEY E. RICHARDSON.

Subscribed and sworn to before me, this 20th day of January, A. D. 1908.

J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM,
Ass't Clerk.

Rule to Show Cause.

Filed January 23, 1908.

In the Supreme Court of the District of Columbia.

Number 27581, Equity Docket.

GUS H. BEAULIEU, Complainant,
v.

JAMES R. GARFIELD, Secretary of the Interior, and RICHARD A. BALLINGER, Commissioner of the General Land Office, Defendants.

Upon consideration of the bill filed in this case, and upon the application of the attorneys for the complainant, it is, this the twenty-third day of January, 1908, ordered that the defendants, James R.

Garfield, Secretary of the Interior and Richard A. Ballinger,
6 Commissioner of the General Land Office, appear on the twenty-first day of February, 1908, in Equity Court, and show cause why the restraining order prayed for in the bill should not issue, service of this order and of the process to be made on or before the twenty-fifth day of January, 1908.HARRY M. CLABAUGH,
*Chief Justice.**Demurrer.*

Filed March 13, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27581.

GUS BEAULIEU, Plaintiff,
*v.*JAMES R. GARFIELD, Secretary of the Interior, and FRED. DENNETT,
Commissioner of the General Land Office, Defendants.

Now comes the defendants, James R. Garfield, Secretary of the Interior, and Fred. Dennett, Commissioner of the General Land Office, and say that it does not appear in and by the said bill of complaint filed herein that there is any equity entitling the complainant to the relief prayed, or any relief whatever, and it does not appear that he has any title or status to maintain this suit, and that it

7 does not appear that the court has any jurisdiction over these defendants by reason of the subject matter of the said bill, and accordingly that the said bill is bad in substance, and they demur to the same upon the grounds, among others as follows:

1. The said suit is virtually and in effect a suit against the United States.

2. It does not appear that there is any right, title or interest in complainant to any of the lands with respect to which relief is prayed in the bill.

3. This court has no jurisdiction to interfere with these defendants as officers of the United States in their decision as to the distribution of any of the lands mentioned in the said bill so long as the legal title to the said lands remains in any appreciable extent in the United States.

4. It appears in and by the said bill that these defendants are sued in their official capacities as Secretary of the Interior and Commissioner of the General Land Office respectively, with regard to matters placed by law within their departments and wholly removed from the province of the courts; and this court has no jurisdiction to interfere with these defendants in the exercise of their discretion and judgment over such matters, or to review, control, annul, or modify their acts or judgments made in their discretion in the premises.

5. It appears in and by the said bill and by the terms thereof that the complainant seeks to have the defendants enjoined from turning over certain lands to the State of Minnesota and to prevent

8 vent the State of Minnesota from acquiring said lands; and

it therefore appears that the rights of the State of Minnesota must be materially affected by any decree made herein, and that the said State of Minnesota is a necessary and indispensable party herein. That with the omission of the State of Minnesota, the bill is defective for want of necessary and indispensable parties, and with the inclusion of the State of Minnesota as a party the court is ousted of jurisdiction, for that no suit will lie by a citizen against a State.

JAMES RUDOLPH GARFIELD.
FRED DENNETT.

DISTRICT OF COLUMBIA, ss.:

James R. Garfield, Secretary of the Interior, and Fred. Dennett, Commissioner of the General Land Office, being first duly sworn, depose and say that they have read over the foregoing demurrer, and that the same is not interposed for delay.

JAMES RUDOLPH GARFIELD.
FRED DENNETT.

Subscribed and sworn to before me this 12th day of March, 1908.

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

I, Daniel W. Baker, United States Attorney for the District of Columbia, say that I am counsel for the defendants herein
9 and have read over the foregoing demurrer and do certify that in my opinion the same is well founded in law.

DANIEL W. BAKER.

Answer.

Filed March 13, 1908.

In the Supreme Court of the District of Columbia.

Number 27581, Equity Docket.

GUS H. BEAULIEU, Complainant,
*v.*JAMES R. GARFIELD, Secretary of the Interior, and FRED DENNETT,
Commissioner of the General Land Office, Defendants.

The Answer of James R. Garfield, Secretary of the Interior, and Fred Dennett, successor to Richard A. Ballinger, party defendant, Commissioner of the General Land Office, to the rule to show cause issued herein.

These defendants, James R. Garfield, Secretary of the Interior, and Fred Dennett, Commissioner of the General Land Office, specifically reserving to themselves all the benefit of the exception to the bill of complaint filed herein on the ground of the lack of jurisdiction of this court over these defendants by reason of the subject-matter of the said bill and lack of jurisdiction to interfere
10 with these defendants in the course of their administrative duties over the land herein, and especially excepting the failure of the bill to specifically designate what particular land is intended to be affected by any decree prayed for herein, and objecting to the lack of status on behalf of complainant to maintain the suit, and from the lack of necessary indispensable parties to this suit, nevertheless for answer to the rule, in so far as they are advised it is material to answer, say:

These defendants neither admit nor deny the allegation that complainant is a citizen of the United States, residing at White Earth in the State of Minnesota, and that he is a mixed blood Chippewa Indian and member of the tribe of Consolidated Bands referred to in the act of Congress entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889 (25 Stat., 645), but in any event deny his right and status to exhibit this bill against these defendants and deny that he has any right of title as an individual in any of the lands sought to be affected by any decree herein. The defendants admit the allegations of their citizenship and incumbencies in the respective offices as set forth in the allegations of the bill but deny the further averment that they are sued as such in so far as those averments are claimed to vest in complainant a right to file this suit against them.

In further answer to said bill these defendants say that the complainant has failed to designate in said bill or in any way
11 specify what particular lands in the State of Minnesota are about to be turned over to the State of Minnesota improperly

by these defendants, and that in so far as the bill states that the so-called Chippewa Indians in the State of Minnesota are the equitable owners of large tracts of lands in said State, secured to them by the terms of different treaties set out in the said bill, the said tract being commonly known and described as "the ceded Chippewa Indian reservations in the State of Minnesota," these defendants deny that the so-called Chippewa Indians are the owners or have any title legal or equitable to *all* of the said land, as indiscriminately mentioned in the said bill, but admit that under the provisions of certain treaties and acts of Congress some of the land is to be sold and the proceeds thereof devoted to the benefit and the use of the so-called Chippewa Indians. The legal title, however, of all of this land in the State of Minnesota, except such as may have been allotted and patented in severalty to members of said Chippewa bands of Indians, or otherwise disposed of, rests in the United States. The defendants further say that in the administration of the treaties and laws referred to in the bill in connection with the act of March 12, 1860 (12 Stat., 3), making a grant to the State of Minnesota of swamp and overflowed lands, the Department has under consideration the character of such of these lands within said ceded Chippewa Indian reservations as were freed from Indian claim at the date of the passage of said swamp land grant. The real situation with respect to the lands heretofore occupied by the Chippewa bands of Indians within the State of Minnesota is as follows:

- 12 The lands which are referred to in the bill of complaint without a specific designation but simply as lands affected by certain treaties and acts of Congress, were originally a part of the country occupied by the several bands of Chippewa Indians in the northern part of what constitutes the present State of Minnesota. A treaty was concluded with these Indians on February 22, 1855 (10 Stat., 1065), by which the said Indians ceded all right, title and claim in and to a large body of the lands formerly occupied by them, including such lands as would be affected by the decree as prayed; so that at the date of the passage of the act of March 12, 1860, extending the provisions of the swamp land grant of September 28, 1850, to the State of Minnesota, they were freed from all Indian claim. After the passage of the act of 1860 and during the years 1864-67, a portion of the lands so released by the treaty of February 22, 1855, as above set out, was included within reservations established for the benefit of those Indians. The swamp land grant act of March 12, 1860, was a present grant but the identification of the particular lands granted was left to the determination of the Secretary of the Interior. In the administration of this grant it became necessary for that officer to consider and determine whether, after the date of the swamp land grant, lands of the character granted could be lawfully reserved by the United States and disposed of for the benefit of the Indians so as to defeat the swamp land grant. This question was determined in favor of the State of Minnesota. The adjustment of the swamp land grant has since proceeded along the line of the decision thus reached and the claim of the State to the lands within the reservation of 1864-67 upon the extinguishment of said

reservation, has been and is being respected. Some of those lands have already been identified by the Secretary of the Interior upon the initiative of the State as swampy in character, and with regard to them it but remains to issue the government patent therefor. Others have been selected by the State but their character has not yet been passed upon by the Secretary of the Interior and it may be necessary to make investigation or examination in the field of such lands before finally passing thereon.

Further answering the said rule these defendants say that there is no action threatened by these defendants which is without warrant of law or which is in violation of the rights of complainant or others of the said Chippewa bands, and these defendants deny that any action has been commenced or is being persisted in by them which would deprive complainant and his associates in the Chippewa bands of upwards of 100,000 acres of land or any amount, without due process of law as claimed in the bill.

And moreover, fully answering the said rule these defendants say that the whole matter of selecting the lands which are swampy in character and which may be disposed of in conformity with the swamp land grant act of March 12, 1860, and the selection of such lands as may be disposed of and the proceeds thereof devoted to the benefit of the said Chippewa bands, are matters placed by law within the province of the Secretary of the Interior and are to be decided

by his sound discretion and involve the necessity of his consideration and judgment, and with the exercise of this discretion and judgment this court has no jurisdiction to interfere. Nor has the complainant as an individual member of the said Chippewa bands, any title to any of the lands referred to in the bill or any rights whatever in the premises before the lands are actually patented in severalty to the members of the tribe, or before they are sold and the proceedings thereof dedicated to his use.

It appears to be the evident purpose of this suit to transfer to the court the determination of these matters devolving primarily upon the Secretary of the Interior, thus seeking to make this court a court of appeals to review the exercise of the judgment and discretion of the Secretary of the Interior.

And having fully answered these defendants pray to be hence dismissed with costs.

JAMES RUDOLPH GARFIELD.
FRED DENNETT.

DANIEL W. BAKER,
U. S. Attorney.

DISTRICT OF COLUMBIA, ss:

James R. Garfield and Fred Dennett being first duly sworn say that they have read over the foregoing answer by them subscribed and they note the contents thereof; that the matters and things therein set out on their personal knowledge they know to be true, and those set out on information and belief they believe to be true.

JAMES RUDOLPH GARFIELD.
FRED DENNETT.

15 Subscribed and sworn to before me this 12th day of March, 1908.

[SEAL.]

W. BERTRAND ACKER,
Notary Public — and for D. C.

Decree.

Filed April 3, 1908.

In the Supreme Court of the District of Columbia.

No. 27581, Equity Docket.

GUS H. BEAULIEU, Complainant,
vs.

JAMES R. GARFIELD, Secretary of the Interior, and RICHARD A. BALLINGER, Commissioner of the General Land Office, Defendants.

This cause came on for hearing on bill of complaint, rule to show cause, answer to the said rule and demurrer to the said bill, and was argued by counsel, and thereupon, upon consideration thereof, it is this 3rd day of April, 1908, ordered that the rule to show cause issued herein be, and the same is hereby discharged; that the demurrer to the bill be, and it hereby is sustained; that the bill be, and it hereby is dismissed, at the cost of the complainant.

By the Court:

HARRY M. CLABAUGH,
Chief Justice.

16 From the above decree complainant prays in open court his appeal to the Court of Appeals of the District of Columbia, which is hereby allowed with bond for cost of appeal fixed in the penalty of One Hundred Dollars.

HARRY M. CLABAUGH,
Chief Justice.

Memorandum.

April 14, 1908.—Appeal bond filed.

Directions to Clerk for Preparation of Transcript of Record.

APRIL 14, 1908.

J. R. Young, Clerk of the Court:

* * * * *

In re "Beaulieu v. Garfield et al." Equity case No. 27581, kindly have prepared a transcript of the record, as follows:

1. Bill praying for an injunction.
2. Order to Show Cause.
3. Demurrer to Bill.

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- 17 4. Answer to Rule.
 5. Decree.
 6. Memorandum, noting that bond was filed.

Please note that originally the case included Hon. Richard A. Ballinger as Commissioner of the General Land Office, but the defendants have suggested the succession of Hon. Fred Dennett to that office, and he is made a party defendant, in the stead of his predecessor.

* * * * *

C. E. RICHARDSON.

- 18 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 17, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 27581, In Equity, wherein Gus H. Beaulieu is Plaintiff and James R. Garfield, Secretary of the Interior, *et al.*, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of May, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1909. Gus H. Beaulieu, appellant, *vs.* James R. Garfield, Secretary of the Interior, *et al.* Court of Appeals, District of Columbia. Filed May 25, 1908. Henry W. Hodges, clerk.

